

APPEAL NO. 021902
FILED SEPTEMBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 8, 2002. The hearing officer determined that appellant (claimant) did not sustain a compensable injury with a date of injury of _____, and that she did not have disability. Claimant appealed these determinations on sufficiency grounds. Claimant also contends that the hearing officer erred in failing to add an issue regarding carrier waiver. The file does not contain a response from respondent (carrier).

DECISION

We affirm.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant contends that the hearing officer erred in failing to add the issue of carrier waiver. The record does not reflect that claimant raised this at the benefit review conference (BRC) or in a response to the BRC report. After a BRC, an issue may be only added for good cause or with the consent of the parties. Section 410.151(b). The record does not reflect that carrier consented and the hearing officer did not make a finding of good cause. On appeal, claimant contends that she had good cause to add the issue because the Texas Supreme Court issued its decision in Continental Casualty Company v. Downs, No. 00-1309 (June 6, 2002). Claimant appears to contend that she could not have requested that a waiver issue be added until after the Texas Supreme Court issued its Downs decision. However, there was nothing that prevented claimant from requesting the addition of a waiver issue before June 6, 2002. We do not find error in the hearing officer's refusal to add the issue of carrier waiver.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **MARYLAND CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge